

## CHAPTER 14

### ROUND II EMPOWERMENT ZONES

14-1 **APPLICABILITY.** The purpose of this Chapter is to provide comprehensive guidance for monitoring the fifteen Round II Empowerment Zones (EZ):

- Santa Ana, California
- New Haven, Connecticut
- Miami-Dade County, Florida
- Gary-Hammond-East Chicago, Indiana
- Boston, Massachusetts
- Minneapolis, Minnesota
- St. Louis, Missouri-East St. Louis, Illinois
- Cumberland County, New Jersey
- Cincinnati, Ohio
- Columbus, Ohio
- Columbia-Sumter, South Carolina
- Knoxville, Tennessee
- El Paso, Texas
- Norfolk-Portsmouth, Virginia
- Huntington, West Virginia-Ironton, Ohio

The focus of the review is to ensure that the EZ is on track for achieving, or has achieved its Strategic Plan goals during the period of designation and is in compliance with applicable requirements.

14-2 **PRE-MONITORING PREPARATION.** This Chapter is to be understood in the context of the risk assessment process described in Chapter 2, “*Management of Monitoring Activities.*” Before monitoring, the HUD reviewer should be familiar with both the EZ program requirements and the design and operation of the EZ entity’s program, particularly those areas that have been identified as high risk or that are the subject of the monitoring. The following materials provide program-specific information on the Round II EZ program:

- the EZ statutes: the Taxpayer Relief Act of 1997 (26 USC 1391, 26 USC 1392); Appropriations Acts (P.L.105-277; P.L.106-74; P.L.106-377; P.L.106-554; P.L.107-73; P.L.108-7, and P.L.108-199);
- the Round II EZ regulations at 24 CFR Part 598; and
- “Post Designation Policies and Procedures for Round II Empowerment Zones.”

The following constitute EZ-specific materials to be reviewed as part of the pre-monitoring preparation:

- the EZ PERMS Assessment (determine if there are concerns or issues noted either by the State or your Field Office for the Assessments submitted to HUD during the last 12 months, or the most recent one);
- the most recent Headquarters review of the Field Office PERMS review;
- any responses by program participants to Headquarters review letters;
- Field Office file correspondence related to EZ issues;
- the Federal Audit Clearinghouse database for OMB Circular A-133 Single Audits that identified ineligible or questioned costs for HUD EZ funds (see <http://harvester.census.gov/sac/>); and
- LOCCS disbursements (for the purpose of judging the EZ's progress in relation to the proportion of approved funds that have been used). HUD reviewers are to contact the Office of Community Renewal to obtain the EZ spreadsheet which contains the status of funds drawn down by the EZ for each of its approved Implementation Plans.

14-3 MONITORING APPROACH. For each of the 15 Round II EZs, select three or more Implementation Plans (IPs) for performance and compliance reviews. One of the IPs selected should be making “adequate progress” as reported in PERMS and HUD’s assessment for the period under review. The purpose of monitoring IPs identified as making “adequate progress” is to verify the information provided in PERMS, as well as to assess compliance. The remaining two IPs should be selected based upon having one or more of the factors identified under Section 14-4 below.

To the extent practicable, the sample should include both completed and on-going IPs. Site-monitored EZ projects should be visually validated. If there are time and/or resource constraints AND the risk analysis indicated fewer than four High Risk factors for the EZ, a smaller sample size to monitor may be considered.

14-4 FACTORS TO CONSIDER IN SELECTING IPs TO MONITOR. The experience of the EZ program highlights certain risk factors HUD reviewers should consider when selecting the IP sample:

- A. Developable Sites: Round II EZs have reported difficulty in implementing Developable Site plans. HUD also has encountered problems in this area. If applicable, IPs with EZ’s Developable Site(s) should be selected.
- B. Large Budgets: IPs with large budgets, especially those that have budgeted large amounts of HUD EZ II funding with little leverage, are considered high risk because they may not necessarily have the support from the private and other public sectors. IPs with the largest budgeted amounts of HUD EZ II funding as well as IPs with the highest overall budget should constitute part of the IP monitoring sample. However, if an IP has already been monitored under another CPD program (e.g., CDBG or HOME) within the last five years, select another IP.

- C. Projects with Activities Outside of the EZ: Because of the need to ensure that expenditures comply with policies on expenditures inside and outside the EZ as well as boundary change policies, IPs with activities outside of the EZ should be selected for review.
  - D. Outstanding Complaints Alleging Failure to Satisfy an EZ Legal Requirement: If HUD is aware of an allegation of non-compliance related to an IP that is currently unresolved, then consider reviewing the IP. The non-compliance may be related to the Strategic Plan, EZ regulations, or other provisions of the grant agreement including, but not limited to, crosscutting statutes.
  - E. Unresolved Monitoring and/or Assessment Issues: IPs with unresolved monitoring or assessment issues, as of the date of the pre-monitoring preparation, should be selected for review, if there are indications that recommended follow-up or corrective actions are not being implemented as planned.
- 14-5 EZ-SPECIFIC MONITORING DETERMINATIONS. The regulations and policies governing EZs contain certain terms or elements that are relevant to measuring the success of the EZ goals. The following guidance is to be applied when measuring progress and drawing monitoring conclusions:
- A. **“Adequate Progress” Determinations.** HUD considers an EZ to be performing adequately if it is making progress in implementing its Strategic Plan (see 24 CFR 598.420). The factors involved in determining whether an EZ is making progress in implementing its Strategic Plan include, but are not limited to, the following:
    - 1. Drawdown rate for grant funds. Determine if the EZ drew down from the grant for completed milestones. Compare the information on outputs and milestones with the percentage of HUD EZ funds expended through the Annual Report end date. Identify any IPs where there is a marked imbalance between the amount of funds spent and the actual progress reported to have been made in producing outputs and in meeting milestones.
    - 2. Obligations. Determine if the EZ Governance Board approved IPs and obligated the EZ grant money with signed contracts for HUD-approved IPs. Determine if the EZ has not obligated monies for an approved IP through a signed contract or commitment letter.

3. Rate of Progress for Implementing Projects and Programs. Look at IP milestones to determine if they were accomplished during timelines developed by the EZ. Determine if the actual outputs met or exceeded projected outputs for completed IPs. Find out if the EZ met projected outputs or milestone deadlines. Milestones behind the IP schedule are cause for concern (since the EZ can update milestones at any time with HUD approval) and include:
    - an EZ experiencing substantial delays (more than 6 months) in initiating action on one or more of its IPs;
    - an EZ falling substantially short in meeting its projected outputs (more than 50% short of where it should be based on the proportion of funds expended); or
    - an EZ with completed projects that are less than 90% of projected outputs.
  4. Leveraging of Private and Other Public Funds. While there is no minimum leverage requirement, leverage was nonetheless a significant consideration in the competitive selection process. Review to determine if there is documentation for reported leverage. For projects in the planning phase, a letter of commitment or an award letter may sufficiently document leverage. For ongoing projects, contracts, grant agreements, tri-party agreements, invoices, cancelled checks, or other electronic records of transactions may sufficiently document leverage.
- B. **“Inadequate Progress” Determinations.** CPD may consider an IP’s progress inadequate if, during the history of the IP under review, any of the following four conditions exist(ed) and the EZ lacks a sufficient and/or reasonable explanation to justify the lack of progress:
1. grant money is not obligated by signed contracts;
  2. money has not been drawn down;
  3. the EZ did not leverage funds;
  4. the IP is complete and actual outputs are less than 90% of projected outputs. (For ongoing IPs, inadequate progress means that the IP is six months late or more than 50% short of where it should be based on the proportion of funds expended.).
- C. **Eligibility.** All Round II HUD EZ funds must be used “in conjunction with economic development activities consistent with the strategic plan of each EZ.” (See the applicable Appropriations Acts referenced in section 14-2 above.)

- D. **“Developable Sites.”** Section 952 of the Taxpayer Relief Act of 1997 (section 26 USC 1391(g)(3)(A)(iii)) established the following requirements for developable sites:
1. a limit of no more than 3 noncontiguous parcels, which are defined as those which may be developed for commercial or industrial purposes;
  2. a limit on the aggregate acreage of the three parcels not to exceed 2,000 acres; and
  3. the developable sites must be developed, or intended to be developed, for commercial or industrial purposes (generally, housing development cannot satisfy this statutory requirement although there may be qualifying circumstances, such as housing for a newly established workforce within the EZ).
- E. **“Substantial Compliance With the Strategic Plan.”** IPs are expected to be similar to the projects and programs submitted in the EZ’s original Strategic Plan. Because 24 CFR 598.215(b)(4)(i) required Strategic Plans to detail only the first two years of implementation, EZs needed to be able to modify, cancel, postpone or create new projects and programs. This has been handled on a case-by-case basis with prior approval from HUD (at the Headquarters level), looking at milestones, sources and uses of funds (24 CFR §598.415). New projects and programs should comply with the regulations governing the development of the Strategic Plan and be consistent with the overall vision and values and goals of the original Strategic Plan.
- F. **Drawing Conclusions.** Because much of the Round II EZ guidance is in the form of policy memoranda, HUD reviewers are requested to contact the HQ Office of Renewal Communities if there are questions as to whether findings of noncompliance should be made, as well as appropriate corrective actions to resolve deficiencies. Guidance should be sought for any such issues **before issuing the monitoring report** in order to ensure defensible findings or conclusions. This will also serve to ensure consistency in the monitoring treatment of the Round II EZs.